

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Glenn)

In re JUSTIN P. et al., Persons Coming
Under the Juvenile Court Law.

GLENN COUNTY HUMAN RESOURCES AGENCY,

Plaintiff and Respondent,

v.

A.P.,

Defendant and Appellant.

C070522

(Super. Ct. Nos.
09JP00454/09JP00455)

Aaron P. (father) appeals from the juvenile court's orders terminating his parental rights to his young sons Justin P. and Simon P. (minors). (Welf. & Inst. Code, §§ 366.26, 395.)¹ Father contends the juvenile court abused its discretion in denying his request for a bonding study and erred in finding the

¹ Further undesignated statutory references are to the Welfare and Institutions Code.

beneficial relationship exception to termination of parental rights did not apply. We find no error and shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Preliminary Proceedings

On October 7, 2009, Glenn County Human Resources Agency (the Agency) filed section 300 petitions on behalf of minors, who were then ages two months (Justin) and 17 months (Simon). The petitions alleged that minors' mother (mother²) had mental health issues, mother and father were abusing drugs and had a history of domestic violence, and minors' home was in a dirty and unsafe condition. The juvenile court detained minors, placing them with their maternal aunt and uncle.

The juvenile court held the jurisdiction hearing on November 5, 2009; both parents submitted on the Agency's report. The court struck the unsafe home allegations and sustained the remaining allegations in the petitions.

The court held the disposition hearing on December 3, 2009. Father had tested positive for marijuana five times in the six weeks following minors' detention and was being treated at a methadone clinic for his addiction to Percocet. He had obtained a "legal marijuana license" but had not disclosed that fact to his substance abuse counselor, who was concerned. Neither he nor mother was participating in reunification services on a regular basis, although they were attending supervised

² Mother is not a party to this appeal. For this reason, we do not provide details pertaining only to her.

visitation twice per week. Minors had made a "smooth transition" to the home of the maternal aunt and uncle. The juvenile court adjudged minors dependents and ordered six months of reunification services for both parents.

Review Hearings and Placement with Father

The court scheduled the six-month review for June 17, 2010. As the hearing approached, father was not doing well in reunification. He and mother had been apart and reconciled several times and were now separated; father lived with his grandmother. Father had been taking medications for sleep (Trazodone), depression (Lexapro) and anxiety (Xanax), along with methadone and marijuana. He was not attending services regularly and struggled with his participation in services due to lethargy caused by his drug use. He was, however, visiting. Minors were doing well in the home of their maternal aunt and uncle. They had developed strong attachments to their maternal aunt and uncle, and sought them out for comfort and reassurance.

The court continued the review hearing several times at the parents' request; the six-month review hearing was ultimately heard on October 7 and November 4, 2010, together with the 12-month review. The Agency had originally recommended termination of services for both parents, but on October 29, 2010, filed an addendum suggesting an additional six months of services for father due to his improved interactions with minors at visits and his improved amenability to services after recently stopping his methadone use. The juvenile court terminated services for mother but extended father an additional

six months of reunification services, setting the 18-month review hearing for March 17, 2011.

On March 10, 2011, the Agency filed a report indicating father was actively participating in reunification services and overnight visits had gone well. However, on March 15, 2011, the Agency filed an addendum report expressing concern about father's recent positive test for synthetic cannabinoids, which father claimed helped him sleep. Accordingly, although the Agency continued to recommend placement with father, it expressed "serious caution" and suggested more intensive services. It then requested the hearing be continued.

Before the next hearing date, on April 1, 2011, father was found unconscious and taken by ambulance to the hospital. He tested positive for methadone upon admission. He was treated for (possibly narcotic induced) bilateral pneumonia and released on April 11, 2011. Father denied taking methadone prior to his hospitalization, claiming his use of NyQuil had produced a false positive test. At the 18-month hearing held on May 19, 2011, the juvenile court adopted the Agency's cautious recommendation to place minors with father and order family maintenance services.

Section 387 Petition

Three months after the court returned minors to him, on August 16, 2011, father was again hospitalized, having overdosed on methadone in minors' presence. He told medical personnel that he "just wanted to get high" and took 12 methadone tablets. The Agency filed supplemental section 387 petitions, based on

father's recent hospitalizations for methadone use and overdose, his May 13, 2011, arrest in Tehama County for being under the influence of alcohol, and his refusal to disclose minors' location. The court issued protective custody warrants and detained minors, again placing them with their maternal aunt and uncle.

Father testified at the September 15, 2011, jurisdiction and disposition hearing. He claimed he had not used methadone for the past year despite his positive tests. The juvenile court sustained the section 387 petitions, terminated father's services, and set the section 366.26 permanency planning hearing for January 19, 2012.

On January 19, 2012, father requested and received a continuance of the section 366.26 hearing to February 16, 2012, in order to be heard on the beneficial relationship exception to termination of his parental rights. The court denied father's subsequent request for a bonding study and the matter proceeded to contested hearing on February 16, 2012.

At the hearing, the Agency presented evidence that minors were doing well in their prospective adoptive home with their aunt and uncle, and were likely to be adopted. They were very bonded to their caregivers and had developed a sibling-like relationship with the caregivers' young daughter. They were healthy and happy, had formed a secure and loving relationship with their caregivers, and enjoyed "appropriate reciprocal attachments." The aunt and uncle had become minors' psychological parents and there was no indication that

termination of parental rights would be detrimental to minors. Finding no exceptions to the requirement that it terminate parental rights at this stage in the proceedings, the juvenile court did so.

DISCUSSION

I

Bonding Study

A. Background

On February 9, 2012, father filed a section 388 petition for the sole purpose of requesting the juvenile court order a bonding study. The court denied the request, which would have required it to continue the section 366.26 hearing, on the ground that the petition was untimely and should have been brought prior to termination of reunification services. Father contends the court's denial was an abuse of its discretion. We disagree.

B. The Law

Bonding studies can aid the court in determining the applicability of the beneficial relationship exception to the termination of parental rights. (See *In re Tabatha G.* (1996) 45 Cal.App.4th 1159, 1167.) However, the court is not required to order a bonding study as a condition precedent to terminating parental rights. (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1339.) "While it is not beyond the juvenile court's discretion to order a bonding study late in the process *under compelling circumstances*, the denial of a belated request for study is fully consistent with the scheme of the dependency statutes, and

with due process.” (*In re Richard C.* (1998) 68 Cal.App.4th 1191, 1197, italics added.)

Continuances in juvenile court are expressly discouraged because the Legislature seeks to keep children from remaining in dependency limbo any longer than necessary. (*In re Emily L.* (1989) 212 Cal.App.3d 734, 743.) They are permitted only upon a showing of good cause. (§ 352, subd. (a).)

C. Analysis

Here, father provided no justification, let alone good cause, for the delay in requesting the bonding study, which would have required another continuance of the permanency planning hearing. The juvenile court terminated reunification services on September 15, 2011--five months before the February 16, 2012, section 366.26 permanency planning hearing. On January 19, 2011, the hearing was continued for a month at *father's request* in order for him to prepare his case for application of the exception. Nonetheless, father did not request a bonding study until the week before the rescheduled permanency planning hearing and provided absolutely no justification for the delay in making the request.

Father claims that a relatively short continuance would not have prejudiced minors. But prejudice is not the issue. “Parents unable to reunify with their children have already caused the children serious harm.” (*In re K.M.* (2009) 172 Cal.App.4th 115, 120.) Once reunification services were terminated, minors’ interest shifted to securing a *permanent* home. (See *In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) As the

permanency hearing approached, minors had been in the dependency system for over two years--when the youngest was only two months old. They were entitled to permanency without delay. (*In re Marilyn H.*, *supra*, 5 Cal.4th at p. 310.) The trial court clearly did not abuse its discretion in denying father's requests.

II

Beneficial Relationship Exception

Father next contends the juvenile court erred by failing to apply the beneficial parental relationship exception to adoption and thus avoid terminating his parental rights.

A. *The Law*

"At the selection and implementation hearing held pursuant to section 366.26, a juvenile court must make one of four possible alternative permanent plans for a minor child. . . . *The permanent plan preferred by the Legislature is adoption.* [Citation.]" [Citations.] If the court finds the child is adoptable, it *must* terminate parental rights absent circumstances under which it would be detrimental to the child." (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1368.)

There are only limited circumstances permitting the court to find a "compelling reason for determining that termination [of parental rights] would be detrimental to the child." (§ 366.26, subd. (c)(1)(B).) One of these is where the parent has maintained regular visitation and contact with the child *and the child would benefit* from continuing the relationship, often referred to as the beneficial parental relationship exception.

(§ 366.26, subd. (c)(1)(B)(i).) The "benefit" to the child must promote "the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575 (*Autumn H.*); *In re C.F.* (2011) 193 Cal.App.4th 549, 555 (*C.F.*).) Even frequent and loving contact is not sufficient to establish this benefit absent a *significant, positive, emotional attachment* between parent and child. (*C.F., supra*, 193 Cal.App.4th at p. 555; *Autumn H., supra*, 27 Cal.App.4th at p. 575.)

"Because a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child's needs, it is only in an extraordinary case that preservation of the parent's rights will prevail over the Legislature's preference for adoptive placement." (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350 (*Jasmine D.*).)

B. Burden and Standard of Review

The party claiming the exception has the burden of establishing the existence of any circumstances which constitute

an exception to termination of parental rights. (*C.F., supra*, 193 Cal.App.4th at p. 553.)

As the parent must establish the existence of the factual predicate of the exception--that is, evidence of the claimed beneficial parental relationship--and the juvenile court must then *weigh* the evidence and determine whether it constitutes a compelling reason for determining detriment, substantial evidence must support the factual predicate of the exception, but the juvenile court exercises its discretion in weighing that evidence and determining detriment. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315.) "On review of the sufficiency of the evidence, we presume in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order." (*Autumn H., supra*, 27 Cal.App.4th at p. 576.) "[E]valuating the factual basis for an exercise of discretion is similar to analyzing the sufficiency of the evidence for the ruling. . . . Broad deference must be shown to the trial judge.'" (*Jasmine D., supra*, 78 Cal.App.4th at p. 1351.)³

³ We acknowledge the parties' discussion in their respective briefing regarding the split of authority as to whether the substantial evidence standard, the abuse of discretion standard, or a hybrid standard applies in reviewing the juvenile court's rejection of exceptions to adoption. We shall apply the hybrid standard, but note that "[t]he practical differences between the two standards are not significant" in this context. (*Jasmine D., supra*, 78 Cal.App.4th at p. 1351.)

C. Analysis

Here, there was evidence that father had a good relationship with minors, especially Simon. The visits were appropriate, and minors called father "daddy or dada."⁴ The juvenile court expressly acknowledged that there was a bond between father and minors. There was also no dispute that father visited regularly--initially once a week but later reduced to twice, and then once, a month. But even "frequent and loving contact" is insufficient to establish the "benefit from continuing the relationship" (§ 366.26, former subd. (c)(1)(A), now subd. (c)(1)(B)(i)) contemplated by the statute (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418). After it became apparent that father would not reunify with minors, the juvenile court had to find an "exceptional situation existed to forego adoption." (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.) The juvenile court determined minors would not benefit from continuing their relationship with father to such a degree that termination of parental rights would be detrimental to them. Father bore the burden to demonstrate the statutory exception applied and failed to make the requisite showing. (See *C.F.*, *supra*, 193 Cal.App.4th at p. 553.) Therefore, the court did not err in terminating parental rights.

By the time of the hearing, minors had spent 25 of the last 28 months of their very young lives removed from father's care

⁴ Minors also called their aunt and uncle "mama" and "dada," respectively.

and placed with their aunt and uncle. Minors were happy and emotionally stable in their placement, and were appropriately attached to their caregivers, with whom they had developed parent-child relationships. Thus, minors were able to develop an attachment to caretakers other than father and were adjusting well to placement out of his custody. The record is devoid of evidence that would permit, much less compel, a finding that either child's relationship with father was "sufficiently strong that the child would suffer detriment from its termination" (*Beatrice M.*, *supra*, 29 Cal.App.4th at p. 1418) or that it established a "*compelling reason* for determining that termination would be detrimental to the child" (§ 366.26, subd. (c)(1)(B), *italics added*). Suggesting to the contrary, the social worker reported that minors had recently adjusted to having their visitation with father reduced from once a week to once a month without suffering any detriment. (See *In re Jason L.* (1990) 222 Cal.App.3d 1206, 1214 [we resolve any conflicts in evidence in favor of juvenile court's order].) As observed by the social worker, "[c]ontinuing to live between two families has the potential of disrupting the formation of healthy attachments for these children in a very important development stage, which could have a detrimental impact on them for the rest of their lives."

Considering all the evidence, the juvenile court could properly conclude that any benefit of minors' continuing their relationship with father did not rise to the type of substantial, positive, and emotional attachment that would cause

minors great harm if severed, and did not outweigh the benefits of a stable and permanent home.

DISPOSITION

The orders of the juvenile court are affirmed.

DUARTE, J.

We concur:

BLEASE, Acting P. J.

MAURO, J.